wife, a parent of a child and a child of a parent. The remedy (for infringing this right of custody) must be by civil action. * * * A body itself may not be property; but this right may be called perhaps a *quasi* property. At any rate it is a right which the law will enforce, and for an infringement of which an action will lie."

Pierce and Wife v. *Proprietors of Swan Point Cemetery and Almira T. Metcalf*, 10 R. I. 227, was the reverse of *Wynkoop* v. *Wynkoop, supra*. There the deceased, Metcalf, had died in 1856 and been buried in his own lot in Swan Point Cemetery, with the consent of his widow and in accordance with his own wishes. At his death this lot became the property of his only child, Mrs. Pierce. In 1869, against the consent of this daughter, and in violation of the by-laws of the defendant corporation, his remains were removed by his widow, and placed in another lot in the same cemetery. His daughter filed a bill in equity to compel the restoration of the remains to their first resting-place. The widow demurred to the bill for want of equity. The other defendant submitted to such order as the court might make in the case. The court, in overruling the demurrer, was of opinion that the remains should be restored to the place from which they had been taken. The view taken was that the person having charge of a body (in this case the corporation defendant) holds it as a sacred trust for the benefit of all who have an interest in it from family or friendship and that a court of equity will regulate this trust and change the custody if improperly managed. In this view, it was said, that it was not necessary to decide what might have been done had the child assented, or what the child might do of herself; and further that, although a body is not property, it may be considered a sort of *quasi* property to which certain persons may have rights, as they have duties, towards it arising out of common humanity. This case contains a very full discussion of the question.

The latest case we have found, except the principal case, is *Secor's Case*, 31 Leg. Int. 268. There it appeared that the widow of the deceased had decently interred her husband's remains, when his son, who averred that he had purchased a lot of ground pursuant to the instructions of his father (for a family burying-ground), insisted upon that being the proper place of interment. The Supreme Court for King's county, New York, upon motion of the widow, granted a perpetual injunction to restrain the son from removing the remains of his father. PRATT, J., in delivering judgment, said: "A proper respect for the dead, a regard for the tender sensibilities of the living, and the due preservation of the public health, require that a corpse should not be disinterred or transported from place to place, except under extreme circumstances of exigency." This ruling was sustained on appeal.

Supreme Court of the United States.

HOME INS. CO OF NEW YORK *v.* BALTIMORE WAREHOUSE CO.

A policy of insurance taken out by warehouse-keepers, against loss or damage by fire on "merchandise, their own or held by them in trust, or in which they have an interest or liability, contained in" a designated warehouse, covers the merchandise itself, and not merely the interest or claim of the warehouse-keepers.

If the merchandise be destroyed by fire, the assured may recover the entire value

of the goods, not exceeding the sum insured, holding the remainder of the amount recovered, after satisfying their own loss, as trustees for the owners.

Goods described in a policy as "merchandise held in trust" by warehousemen, are goods intrusted to them for keeping. The phrase "held in trust" is to be understood in its mercantile sense.

A policy was taken out by warehousemen on "merchandise" contained in their warehouses, "their own, or held by them in trust, or in which they have an interest or liability." Depositors of the merchandise, who received advances thereon from the warehousemen, took out other policies covering the same goods. *Held*, that the several policies constituted double insurance, and that they bear a loss proportionally.

In a case of contributing policies, adjustments of loss made by an expert may be submitted to the jury, not as evidence of the facts stated therein, or as obligatory, but for the purpose of assisting the jury in calculating the amount of liability of the insurer upon the several hypotheses of fact mentioned in the adjustment, if they find either hypothesis correct.

What evidence may be submitted to a jury from which they may find a waiver of preliminary proofs.

No part of a letter written as an offer of compromise is admissible in evidence.

ERROR to the Circuit Court for the District of Maryland.

The opinion of the court was delivered by

STRONG, J.—The most important question in this case relates to the proper construction of the defendants' policy of insurance. It is contended on their behalf that it covered only the warehouse company's interest in the goods contained in the warehouse. If this is the true meaning of the contract, the instruction given by the Circuit Court to the jury was erroneous. If, on the other hand, the policy covered the merchandise itself, and not merely the interest which the warehouse company had therein, there is no just ground of complaint of the charge of the circuit judge. Blanket and floating policies are sometimes issued to factors or to warehousemen, intended only to cover margins uninsured by other policies, or to cover nothing more than the limited interest which the factor or warehouseman may have in the property which he has in charge. In those cases, as in all others, the subject of the insurance, its nature and its extent, are to be ascertained from the words of the contract which the parties have made. It is as true of policies of insurance as it is of other contracts, that except when the language is ambiguous, the intention of the parties is to be gathered from the policies alone. There are cases in which resort may be had to parol evidence to ascertain the subject insured, but they are cases of latent ambiguity. So, in the construction of other contracts, parol evidence is admissible to explain such am-

biguities. In this particular the rule for the construction of all written contracts is the same. Lord MANSFIELD said long ago that courts are always reluctant to go out of a policy for evidence respecting its meaning: *Loraine* v. *Tomlinson*, Doug. 564. And so are the authorities generally: *Astor* v. *The Union Insurance Co.*, 7 Cowen 202; *Murray* v. *Hatch*, 6 Mass. 465; *Levy* v. *Merrill*, 4 Greenleaf 480; *Baltimore Fire Ins. Co.* v. *Loney*, 20 Md. 36; Arnold on Insurance 1316–17 and notes; Greenleaf on Evidence, vol. 2, 377. It is no exception to the rule that when a policy is taken out expressly "for or on account of the owner" of the subject insured, or "on account of whomsoever it may concern," evidence beyond the policy is received to show who are the owners, or who were intended to be insured thereby. In such cases the words of the policy fail to designate the real party to the contract, and therefore, unless resort is had to extrinsic evidence, there is no contract at all: *Finney* v. *The Bedford Ins. Co.*, 8 Metc. 348.

Turning, then, to the policy issued to the plaintiff below, and construing it by the language used, the intention of the parties is plainly exhibited. Its words are: The Home Insurance Company "insure Baltimore Warehouse Company against loss or damage by fire to the amount of $20,000, on merchandise hazardous or extra hazardous, their own or held by them in trust, or in which they have an interest or liability, contained in" a certain described warehouse. There is nothing ambiguous in this description of the subject insured. It is as broad as possible. The subject was merchandise stored or contained in a warehouse. It was not merely an interest in that merchandise. The merchandise of the warehouse company, owned by them, was covered, if any they had. So was any merchandise in the warehouse in which they had an interest or liability. And so was any merchandise which they held in trust. The description of the subject must be entirely changed before it can be held to mean what the insurers now contend it means. If, as they claim, only the interest which the warehouse company had in the merchandise deposited in their warehouse was intended to be insured, why was that interest described as the merchandise itself? Why not as the assured's interest in it? Throughout the policy, wherever the subject intended to be insured is spoken of, it is described not as a partial interest, not as a mere lien for advances and charges upon the goods held in storage, but as the property itself, whatever might be the existing

rights to it. Thus the insurance company covenanted to make good to the assured all such loss or damage, not exceding the sum insured, as should happen by fire "to the property as above specified." What that specification was we have seen. The policy also contained a provision that in case of fire the "property" destroyed might be replaced by similar "property" of equal value and goodness. There are other like designations. Nowhere is any less interest in the goods insured alluded to than the entire ownership. The words of the policy are not satisfied if their import be restrained as the plaintiff in error seeks to confine it. The parties to whom the policy was issued were warehouse-keepers, receiving from various persons cotton and other merchandise on deposit. They were empowered by their charter to receive bailments and to make charges against the bailors for handling, labor and custody. They were also authorized to made advances upon the goods deposited with them, and their charges, expenses, advances and commissions were made liens upon the property. They had therefore an interest in the merchandise deposited with them, which they might have caused to be specifically insured. It was also at their option to obtain iusurance upon the entire interest in the merchandise, whether held by them or by the depositors. Nothing in their charter forbids such insurance. It is undoubtedly the law that wharfingers, warehousemen and commission merchants, having goods in their possession, may insure them in their own names, and in case of loss may recover the full amount of insurance, for the satisfaction of their own claims first, and hold the residue for the owners: *Waters* v. *The Monarch Assurance Co.*, 5 E. & B. 870; *London & Northwestern Railway Co.* v. *Glyn*, 1 E. & E. 652; *De Forest* v. *Fulton Ins. Co.*, 1 Hall 136; *Siter* v. *Moritz*, 13 Penna. St. 219. Such insurance is not unusual, even when not ordered by the owners of goods, and when so made it enures to their benefit. And such insurance, we must hold, the warehouse company sought and obtained by the policy of the plaintiff in error. The words "merchandise held in trust" aptly describes the property of the depositors. The warehouse company held merchandise in trust for their customers, not, it is true, as technical trustees, but as trustees in the sense that the goods had been intrusted to them. They were not empowered by their charter to hold property under technical trusts cognizable only in equity. Hence, when they sought insurance of merchandise held by them

in trust, it must have been intended of such as they held in trust, in a mercantile sense, goods intrusted to them by the legal owners. That such is the meaning of the words as used in this policy we cannot doubt. And such has been held by courts of the highest authority to be the meaning of similar words in fire policies. In *Waters* v. *The Monarch Fire & Life Assurance Co.*, above cited, the policy was issued to persons described as corn and flour factors, who were in fact flour merchants, warehousemen and wharfingers. It was on goods in their warehouses, and on goods in trust or on commission therein. The assured had in their warehouses goods belonging to their customers deposited with them as warehouse-keepers, and on which they had a lien for charges for cartage and warehouse rent, but no further interest of their own. They made no charge to the customers for insurance, nor was the customer informed of the existence of the policy. It was ruled that the goods were held in trust, within the meaning of the policy, and, there having been a destruction by fire, that the assured were entitled to recover their entire value, applying so much as necessary to cover their own interest, and holding the remainder as trustees for the owners. Lord Chief Justice CAMPBELL said "it was not intended to limit the policy to the personal interest of the plaintiff, for in this and all other floating policies, the promise is to make good the damage to the goods."

A similar ruling was made in the *London and Northwestern Railway Company* v. *Glyn*, *supra*. There the plaintiffs, who were common carriers, had obtained insurance of goods against fire in a company of which the defendant was treasurer. The policy declared 15000*l.* to be insured "on goods their (the plaintiffs') own, and in trust as carriers" in a certain warehouse, and it was stipulated that the company were to be liable to make good to the "assured," all loss which they, "the assured," should suffer on the property therein particularized. In an action on the policy, it was held that to the extent of 15,000*l.*, the whole value of the goods in the warehouse in the plaintiffs' possession was insured by it, and not merely their interest in the goods, and that the plaintiffs would be regarded as trustees for the owners of the amount thus recovered, after deducting their charges as carriers.

In opposition to this construction of the policy now before us, our attention has been called by the plaintiffs in error to a provision in the charter of the warehouse company, and to the notice

accompanying the receipts they gave for the merchandise delivered to them in storage. The tenth section of their charter, after requiring that the receipts, warrants or warehouse certificates issued by the corporation for goods, wares and merchandise in their possession, should be signed by the president or vice-president and secretary, and attested by the corporate seal, after requiring that copies of them should be registered, and declaring that they should be transferable by endorsement, enacted that every such receipt, warrant or warehouse certificate should contain on its face a notice that the property mentioned therein was held by the corporation as bailees only, and was not insured by the corporation. Accordingly all the warehouse receipts did contain such notices. But we are unable to perceive how these facts can have any bearing on the proper construction of the policy. The company was not prohibited by its charter from obtaining insurance to their full value of the goods left with them in bailment. At most, the requirement of the charter was that they should not themselves become insurers. And the notice required to be given to the bailors meant no more than that neither the receiving of the goods nor the certificate of receipt amounted to a contract of insurance. It would be straining the language of the notice most unwarrantably, were we to treat it as amounting to an engagement that the company would not obtain insurance of the property from some corporation authorized to insure.

Without pursuing this discussion further, we have said enough to vindicate our opinion that the policy upon which this suit was brought, covered the merchandise held by the warehouse company on storage, and not merely the interest of the bailees in that property. It follows, necessarily, that there was double insurance. The policy issued to the warehouse company and those obtained by the depositors of the merchandise covered the same property, and they were for the benefit of the same owners. The persons assured were the same, for if the policies taken out by Hough, Clendennin & Co. were upon their goods, notwithstanding the memorandum that the loss, if any, was payable to the Baltimore Warehouse Company, as may be conceded was the case, so was the policy now in suit. The insurers are liable, therefore, *pro ratâ*, each contributing proportionately. It follows that the plaintiffs in error have no reason to complain of the refusal of the court below to affirm their first and seventh points, and none to complain of the instruc-

tions given to the jury respecting the extent to which the plaintiffs were entitled to recover, if they could recover at all.

The next question presented by the record, which we propose to consider, is raised by the fourth, the seventh, eighth and the ninth assignments of error. Those assignments complain of the affirmance of the plaintiffs' fifth point, and of the disaffirmance of the defendants' third, fourth and sixth. Beyond doubt it was a question for the jury whether furnishing preliminary proof of loss was waived by the defendants or by their authorized agent, if there was any evidence of waiver to be submitted to them. And we think there was such evidence. The defendants were an insurance company of the state of New York. By the act of the Maryland legislature, which empowered them to do business in Maryland, the agent of the company was required to have authority "from the parent office or offices to settle losses without the interference of the officer or officers of the said parent office or offices." Mr. Coale was their agent, and clothed with such authority. He could, therefore, waive the presentation of preliminary proofs, and his waiver was binding on his principals: *Franklin Fire Ins. Co.* v. *The Chicago Ice Co.*, 36 Md. 102. A waiver may be proved indirectly by circumstances as well as by direct testimony. If, after the time for presenting preliminary proofs had gone by, Mr. Coale acted and spoke as if they had been presented in season; if, while resisting the claim upon his company, he placed his objections entirely upon other grounds, and never alluded to any failure of the plaintiffs to exhibit preliminary proofs until those other grounds were apparently swept away; if, after making a payment for a loss of twenty-four bales of cotton, and after he was notified that the policy would be retained in order to assert afterward other claims upon it, he expressly waived another one of its conditions, for the purpose of giving to the plaintiffs a continuing right to bring a suit, the jury might well have inferred that the condition of giving notice of the loss and making preliminary proof had been waived. Such conduct on his part was consistent with a conclusion that such a waiver had been made. It is difficult to account for it if there had been none. Yet all this evidence and more was before the jury. These assignments of error, therefore, cannot be sustained.

The sixth assignment of error requires but a single remark. We do not see that the evidence warranted the hypothesis upon which the defendants' second prayer was based, but if it did, it

would be impertinent to the case. If the plaintiffs were mistaken in regard to their rights as against other insurers, such a mistake cannot affect their claim on the defendants' policy.

The tenth assignment has already been shown to be unfounded by what we have heretofore said.

It remains only to notice some rulings of the Circuit Court in respect to offers of evidence. The court admitted in evidence, notwithstanding objection by the defendants, several statements or plans of adjustment of the loss made by an expert, and founded upon different theories of the law. They were not admitted as evidence of the facts stated in them, or as obligatory upon the jury, but only for the purpose of assisting the jury in calculating the amount of liability of the defendants upon the several hypotheses of fact stated in them, and stated only hypothetically. It is impossible that the defendants could have been injured by their reception, and without some such assistance no intelligent verdict could have been rendered. The jury was left free to accept either hypothesis, or reject them all. We think there was no error in admitting the calculations.

Nor was there error in receiving the record of the suit of Hough, Clendennin & Co. *v.* The People's Ins. Co., in the Maryland courts, under the circumstances of the case. The present parties had agreed to extend the time within which this suit might be brought, until the decision of the questions involved in the suit of Hough, Clendennin & Co. The record of that suit, therefore, was evidence to show its termination. But if not, it was merely irrelevant, and and it is not shown that it tended in the least to mislead the jury, as judgment is not to be reversed because evidence was admitted at the trial which could have had no bearing upon the issue, unless it appears that it was misleading in its tendency. The only remaining assignment of error is that the Circuit Court would not receive in evidence any part of a letter written by the President of the warehouse company to Mr. Coale, the defendants' agent. The letter was an offer of compromise, and as such, upon well recognised principles, it was inadmissible. And it contains no statement which can be separated from the offer, and convey the idea which was in the writer's mind. The court was clearly right in rejecting it.

The judgment is affirmed.